

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RALPH STUBBS)	
Claimant)	
VS.)	
)	
UNITED PARCEL SERVICE)	Docket No. 192,450
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

The application of the above claimant from the Award of Administrative Law Judge Alvin E. Witwer came on for review by the Workers Compensation Appeals Board.

APPEARANCES

Claimant appeared by and through his attorney, Keith L. Mark of Mission, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Frederick J. Greenbaum of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Michael R. Wallace of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant met with accidental injury or injuries on the dates alleged.
- (2) Whether claimant's accidental injuries arose out of and in the course of his employment with respondent.
- (3) Notice.
- (4) Claimant's entitlement to temporary total disability compensation from June 7 through December 5, 1994.
- (5) Whether certain medical expenses incurred by claimant should be ordered paid by the respondent as authorized medical.
- (6) Whether the claimant is entitled to future medical upon application to and approval by the director.
- (7) Whether claimant is entitled to unauthorized medical expense not to exceed \$500.
- (8) The amount of compensation due if any.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

This matter originally came before the Workers Compensation Appeals Board on a appeal from the November 3, 1994, preliminary hearing Order of Administrative Law Judge Alvin E. Witwer. The Appeals Board, in affirming the Order of Judge Witwer, found claimant had failed to prove accidental injury arising out of and in the course of his employment with respondent and further had failed to prove timely notice. This matter is now before the Appeals Board upon claimant's appeal of the January 31, 1997, Award wherein Judge Witwer again found that claimant failed to prove accidental injury arising out of and in the course of his employment with respondent on the dates alleged and that claimant had failed to prove timely notice of the alleged injuries as required by K.S.A. 44-520.

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Appeals Board further finds that the Award of the Administrative Law Judge should be affirmed in that claimant has failed to prove accidental injury arising out of and in the course of his employment with respondent and has further failed to prove that he provided appropriate and timely notice as is required by K.S.A. 44-520.

Claimant's allegations of separate injuries on May 2, 1994, and June 1, 1994, are not supported by a preponderance of the credible evidence. Claimant's failure to advise respondent in a timely fashion of these injuries is fatal to his claim. It is further noted claimant failed to advise the doctors to whom he went for treatment in June 1994 that his ongoing symptomatology was in any way related to a work accident. Therefore, the Appeals Board finds that the Award of Administrative Law Judge Alvin E. Witwer, denying claimant benefits for having failed to prove he suffered accidental injury arising out of and in the course of his employment and timely notice, should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer dated January 31, 1997, should be, and is hereby, affirmed in all regards and an award is herein denied the claimant, Ralph Stubbs, and against the respondent, United Parcel Service, and its insurance carrier, Liberty Mutual Insurance Company, and the Kansas Workers Compensation Fund for the alleged injuries.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed to be paid 25% by the respondent and its insurance carrier and 75% by the Kansas Workers Compensation Fund pursuant to the stipulation of the parties to be paid as follows:

Metropolitan Court Reporters, Inc.	\$ 435.10
Richard Kupper & Associates	\$ 428.30
Gene Dolginoff & Associates	\$1,176.30

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Frederick J. Greenbaum, Kansas City, KS
Michael R. Wallace, Overland Park, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director